

DEPARTMENT OF THE TREASURY

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Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury is amending the Cuban Assets Control Regulations, 31 CFR part 515 (the “CACR”), to clarify the meaning of the term “payment of cash in advance,” which is used in the restrictions on payment and financing terms for authorized exports from the United States to Cuba.

DATES: Effective Date: [insert date of FILING for public inspection at the office of the Federal Register].

FOR FURTHER INFORMATION CONTACT: Chief of Policy Planning and Program Management, tel. 202/622-4855, Chief of Licensing, tel.: 202/622-2480, Chief of Compliance, tel. 202/622-2490, or Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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at ofacftp.treas.gov. Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

Section 908(b)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000, Pub. L. 106-387, prohibits U.S. persons from providing payment or financing terms for authorized sales of agricultural items to Cuba or any person in Cuba other than through "payment of cash in advance" or certain financing by third-country financial institutions. Last fall, U.S. financial institutions stopped payments that were in process and requested guidance from the Treasury as to whether the term required the seller to receive payment before shipping the goods from the United States or before delivering the goods to the Cuban purchaser.

To mitigate the immediate impact on the transfer of such payments, OFAC adopted an interim policy of issuing specific licenses that authorized the unblocking of such payments pending the issuance of further guidance clarifying the meaning of the term "payment of cash in advance." OFAC created this specific licensing policy to ensure the Cuban people did not experience a disruption in agricultural shipments to Cuba and to avoid any unnecessary disruption of U.S. business.

With this final rule, OFAC is amending paragraph (a)(2) of § 515.533 of the CACR to clarify that the term "payment of cash in advance" means that payment is received by the seller or

the seller's agent prior to shipment of the goods from the port at which they are loaded. This conforms to the common understanding of the term in international trade finance. In order to continue to avoid a disruption in agricultural shipments to Cuba, OFAC is amending paragraph (d) of § 515.533 to provide a general license authorizing the processing of payments received for certain exports to Cuba that are shipped prior to receipt of payment for a limited time. This general license only applies when the goods are shipped from the port at which they are loaded on or before [insert date 30 days after the date of FILING for public inspection at the office of the Federal Register] and when payment is received by a U.S. banking institution on or before [insert date 30 days after the date of FILING for public inspection at the office of the Federal Register] and prior to transfer of title to, and control of, the goods to the Cuban purchaser.

Public Participation

Because the CACR involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

The collections of information related to the CACR are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cuba, Currency, Foreign Trade, Imports, Reporting and recordkeeping requirements, Securities, Travel Restrictions.

For the reasons set forth in the preamble, part 515 of 31 CFR Chapter V is amended as follows:

1. The authority citation for 31 CFR part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106-387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., p. 157; E.O. 12854, 58 FR 36587. 3 CFR, 1993 Comp., p. 614.

Subpart E--Licenses, Authorizations, and Statements of Licensing Policy

2. Amend § 515.533 by revising paragraphs (a)(2) introductory text and (a)(2)(i) and by adding paragraph (d) to read as follows:

§ 515.533 Transactions incident to exportations from the United States to Cuba and reexportations of U.S.-origin items to Cuba; negotiation of executory contracts.

(a) * * *

(2) Only the following payment and financing terms may be used:

(i) Payment of cash in advance. For the purposes of this section, the term “payment of cash in advance” means that payment is received by the seller or the seller’s agent prior to shipment of the goods from the port at which they are loaded;

* * * * *

(d) In addition to those transactions authorized pursuant to paragraph (a) of this section, all transactions ordinarily incident to the processing of payments received for items exported from the United States to any person within Cuba are authorized, provided that:

(1) The exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420) (see the Export Administration Regulations, 15 CFR 730-774);

(2) The items are shipped from the port at which they are loaded on or before [insert date 30 days after the date of FILING for public inspection at the office of the Federal Register]; and

(3) Payment is received by a U.S. banking institution on or before [insert date 30 days after the date of FILING for public inspection at the office of the Federal Register] and prior to the transfer of title to, and control of, the exported items to the Cuban purchaser.

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Dated: February 18, 2005

/s/ Robert W. Werner

Robert W. Werner,

Director, Office of Foreign Assets Control

Approved: February 18, 2005

/s/ Juan C. Zarate

Juan C. Zarate

Assistant Secretary for Terrorist Financing, Department of the Treasury

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